In the High Court Of Uttaranchal, At Nainital

Criminal Misc. Application No. 178/2005

1-Aninder Singh S/o J.S. Arora,

2-Bhupender Singh S/o J.S. Arora,

Both R/o Village Suddhowala,

Dehradun .....Applicants

Versus

1-State of Uttaranchal

2-Kuldeep Singh S/o Tara Singh
R/o 2, Uttarayan lane, Majra
Dehradun ... Opp. Parties.

Sri L.K. Tiwari, Advocate for the applicants.
Sri Ramji Srivastava and Sri Lok Pal Singh,
Advocates for the respondent No.2.
Learned A.G.A. for the State.

Hon'ble B.C. Kandpal, J.

This petition U/S 482 Cr.P.C. has been field by the applicants for quashing the proceedings in criminal case No. 1099/2004, Kuldeep Singh Vs. Eme Cambridge Institute of Technology and others, U/S 138 of Negotiable Instruments Act, pending before the Judicial Magistrate –I, Dehradun.

2- Brief facts of the case, as emerged out from the record are that a complaint U/S 138 of the Negotiable Instruments Act was filed by one Kuldeep Singh against the Eme Cambridge Institute of Technology through its Chairman, Chairman of the Institute, Aninder Singh (petitioner No. 1 in this petition), who is the Programme Director of the Institute and Bhupendra Singh (petitioner No.2 in this petition) being the Registrar of the Institute, with the allegations that the complainant

Kuldeep Singh is a Building Contractor and accused No.1 is Eme Cambridge Institute of Technology (hereinafter called as the Institute), and accused Nos. 2 to 4 are Chairman, Programme Director and Registrar respectively. Therefore, they are jointly and severally incharge responsible and liable of the acts done by, on behalf of the accused No.1, which is the Institute. It has also been alleged that all the other accused hold the office in campus and control the day to day work of the Institute. The accused Nos. 2 to 4 approached to complainant on behalf of accused No.1 to construct the building of the Institute and complainant upon the instructions and directions of accused persons constructed the building. An amount of Rs. Four Lacs is due against the Institute for which the Chairman of the Institute J.S. Arora issued an account payee cheque dated 8-5-2003 to be drawn at Central Bank of India amounting to Rs. 3,89,000/- in the name of the complainant with the assurance that the cheque shall be honoured on on presentation in the Bank on the due date, i.e. 24.5.2003. The complainant received the said cheque and presented the same with the Bank on 24.5.2003, but the cheque was dishonoured. Thereafter the complainant sent the legal notice to the accused, which was duly served upon all the accused persons. Even after the service of the notice the accused persons did not pay back the amount to the complainant, therefore, he filed a complaint before the competent court of jurisdiction U/S 138 of the Negotiable Instrument Act.

3- The C.J.M., Dehradun vide order dated 28-7-2003 after having perused the complaint as well as the statements of the complainant and the witnesses had come to the conclusion that there was prima facie case

to proceed against the Institute, its Director, Aninder Singh, Programme Director and Bhupendra Singh, Registrar of the Institute U/S 138 of the Negotiable Instruments Act.

4- Feeling aggrieved by the aforesaid impugned order the Programme Director of the Institute Aninder Singh and the Registrar of the Institute Bhupendra Sing have filed the petition U/S 482 of the Cr.P.C. before this Court for quashing the criminal proceedings pending against them.

5- Pleadings have been exchanged by the parties.

6- Heard Sri L.K. Tiwari, learned counsel for the petitioners, Learned A.G.A. and Sri Ramji Srivastava and Sri Lok Pal Singh, learned counsel for the respondent No.2 and perused the material available on the record.

7- Learned counsel for the petitioners has argued that there is no prima facie case against the petitioners and as such the notices issued by the Court concerned against them to stand trial U/S 138 of the Negotiable Instruments Act is against law. It has also been submitted that the petitioners being Programme Director and the Registrar of the Institute are only concerned with the education activities, hence in view of the provisions of Section 141 of the Negotiable Instruments Act they cannot be held liable for the conduct of the business of the Institute. It has therefore been submitted that the proceedings initiated against them be quashed.

8- Sri Ramji Srivastava, learned counsel for the O.P. No.2, on the other hand has argued that it is quite clear

from the perusal of the complaint that both of the petitioners are incharge of and are responsible to the Institute for the conduct of the business of the Institute, therefore the prosecution against them is justified. He has invited my attention towards paragraphs 1 and 2 of the complaint in which it has been averred that the accused No.1 is the Institute and accused 2 to 4 are Chairman, Programme Director and Registrar of the Institute hence they are jointly and severally incharge of and responsible of the act done on behalf of the Institute.

9- In order to resolve the controversy in the instant case, the provisions of Section 141 of the Negotiable Instruments Act would be relevant, which reads as under:-

"141. Offences by companies- (1) If the person committing an offence under Section 138 is a company, very person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

Provided further that where a person is nominated as a Director of a Company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State

Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer, shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation- For the purposes of this section,-

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm, means a partner in the firm."

10- I have perused the complaint filed by Kuldeep Singh against the petitioners and two other accused person who have not approached this Court. In the complaint it has no where been stated that in what manner the Programme Director is the incharge and responsible to the Institute for the conduct of the business of the Institute. There is no iota of evidence available on the record that Aninder Singh being Programme Director is actively involved in the business of the Institute. It has also no where been mentioned in the complaint that Aninder Singh being the Programme Director has actively participated in the commission of the crime or there is any connivance of the petitioner No.1 in the offence.

11- As far as the petitioner No.2 is concerned, he is the Registrar of the Institute, therefore, it can be safely

inferred that he being the Registrar of the Institute is incharge of and responsible to the Institute for the conduct of the business of the Institute. Therefore I find sufficient allegations in the complaint with regard to the liability of the petitioner No.2 being Registrar of the Institute. Whether the petitioner No.2 being Registrar of the Institute is actually liable or not will have to be considered through the evidence by the trial Judge therefore I do not find any force with regard to the case of petitioner No.2 and also I do not find any abuse of process of the court in the matter of petitioner No.2, who being the Registrar of the Institute can be inferred that he was incharge of an responsible to the Institute for the conduct of its business, hence I do not find any force as far as the case of petitioner No.2 is concerned and the petition pertaining to him is liable to be dismissed.

12- As I have already observed that the petitioner No.1 is a Programme Director in the Institute, therefore in the absence of any allegation in the complaint or pre-summoning evidence even to obliquely suggest that petitioner No.1 was at any point of time directly or indirectly incharge of the business of the Institute or that office was committed with his consent or connivance of, or in attributable to, any neglect on his part, he cannot be roped in U/S 141 of the Negotiable Instruments Act. I do not have any hesitation in observing that the proceedings against petitioner No.1 is clearly an abuse of process of the Court.

13- The petition on behalf of petitioner No.1 Aninder Singh therefore succeeds and the proceeding initiated against the petitioner No.1 Aninder Singh, who is the

Programme Director of the Institute is laiable to be quashed.

14- Accordingly the petition on behalf of petitioner No.1 is allowed and the proceeding in criminal case No. 1099/2004 Kuldeep Singh Vs. Eme Cambridge Institute of Technology and others U/S 138 of the Negotiable Instruments Act, pending before the Judicial Magistrate –I, Dehradun against him is hereby quashed.

15- With the aforesaid observation this petition is partly allowed, as the petition on behalf of the petitioner No.1, Aninder Singh is allowed and as far as it relates to petitioner No.2, Bhupendra Singh, the same stands dismissed. The stay order dated 01-04-2005 is vacated.

(B.C. Kandpal, J.)

Dated: 11-7-2006

ISB